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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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2008 JUL 22 PM 2:47
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In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221	)	Case No. 08-777-EL-ORD

INITIAL COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY

I. INTRODUCTION

On July 2, 2008 The Public Utilities Commission of Ohio ("Commission") issued an Entry seeking comments on the Commission Staff's ("Staff") proposed rule changes and new rules in connection with Ohio Administrative Code Chapters 4901:1-35 through 4901:1-38. The Dayton Power and Light Company ("DP&L") respectfully submits the following comments for the Commission's consideration pursuant to that Entry.

II. 4901:1-35 ELECTRIC UTILITY STANDARD SERVICE OFFER

A. 4901:1-35-09 Electric security plan fuel and purchased power adjustments

DP&L proposes that 4901:1-35-09 (B), relating to quarterly adjustments based on projected costs, explicitly include the concept that a utility may propose in conjunction with such quarterly adjustments a true-up or reconciliation mechanism under which the projected recovery of such costs through the rates set in the prior period are compared to actual cost recovery and the differences or some portion thereof are to be reflected as an adjustment to the rate to be set in the current period based on the latest projection of costs.

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The basis for recommending that the reconciliation be of the differences "or some portion thereof" is to permit flexibility in situations where recovery in the next three months of differences that arose in the prior period would cause an *inappropriately* large adjustment. If, for example, actual costs happened to be well above forecasts within the third quarter when electric usage tends to be highest, a large under-collection would result. Attempting to recover the entire under-collection over the smaller quantities of electricity that would typically be sold within the fourth quarter, would require a large per kWh increase. In such a circumstance, a proposal to reduce the size of the increase by recovering the under-collection over a longer period, with carrying cost, may be in the public interest. The reverse can also happen and the public interest could similarly be in favor of a longer period for a return of an over-collection, with carrying cost. For example, if a large over-collection were to be returned over a three-month period that has relatively low sales quantities, the rate adjustment could make it virtually impossible for a Competitive Retail Electric Service ("CRES") provider to compete that quarter against a price that is well below the current market price due to the reconciliation adjustment.

B. 4901:1-35-10 Annual review of electric security plan

The rules related to the earnings test are inconsistent and not supported by the authority provided to the Commission in S.B. 221. Ohio Revised Code Section 4928.143 (F) only applies to any **adjustments** made through the ESP filing. It does not bring into question any existing rates that the Commission already has found prudent and justified. In addition, ORC Section 4928.143 (E) states that if the ESP exceeds three years, then the earnings test *will only* be applied in the fourth year and every fourth year thereafter. This section as written requires that a filing be made "within ninety days after the end of **each** annual period." This rule should be modified as follows:

(A) For an Electric Security Plan (ESP) with a term of three years or less: wWithin ninety days after the end of each annual period of an ~~electric utility's electric security plan (ESP)~~ in which a rate adjustment pursuant to ORC 4928.143(B)(2) has been implemented, the electric utility shall make a separate filing with the commission demonstrating whether or not any rate adjustments authorized by the commission as part of the electric utility's ESP resulted in excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The electric utility's filing shall include the information set forth in appendix B to rule 4901:1-35-03 of this chapter as it relates to excessive earnings.

(B) For an ESP with a term of more than three years: within ninety days after the end of the first three year period of an ESP in which a rate adjustment pursuant to ORC 4928.143(B)(2) has been in place, the electric utility shall make a separate filing with the commission demonstrating whether or not any rate adjustments authorized by the commission as part of the electric utility's ESP resulted in excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The electric utility's filing shall include the information set forth in appendix B to rule 4901:1-35-03 of this chapter as it relates to excessive earnings.

The remainder of this section of rules should be renumbered accordingly.

C. 4901:1-35-11 Competitive bidding process ongoing review and reporting requirements

Section (B)(1) second line down refers to fuel, purchased power, and portfolio requirements. For clarification purposes DP&L suggests that the word "renewable" be inserted before the words "portfolio requirements."

Section (B)(3) of this section does not reflect the fact that once the utility no longer owns its generation assets or once the blending period is complete, the earnings test does not apply as dictated by ORC 4928.142. The rule should be modified as follows:

(3) The electric utility shall provide projections, in its quarterly filing, of any impacts that the proposed adjustments will have on its return on common equity. Once the blending period is complete or the electric utility no longer owns generating facilities that are used and useful in the state of Ohio, consistent with ORC 4928.142, the earnings test's provisions no longer apply.

Section (B)(5) of this section states that if an emergency situation occurs and the utility claims that its financial integrity is threatened by operating under its approved CBP plan, it should file for relief in its annual status report. Depending on the nature of the emergency situation, waiting until the annual status report is filed may not be practical for granting appropriate relief. This rule should be modified to allow a utility to seek relief at anytime by filing at the Commission documentation that demonstrates its claim of financial emergency.

D. Filing and contents of applications—Appendix B

Subsection (F) of this section discusses how the utility plans to address government aggregation programs. Since the State has chosen a hybrid approach to deregulation, some policies contained in SB 221 are consistent with fully competitive retail generation markets, while others are more reflective of traditional regulated electric service. The state policy on government aggregation is one that is inconsistent with traditional, stable, cost of service based utility service and places a huge amount of uncertainty on the utility, as well as the customers that may be served by a governmental aggregator. The new provisions §4928.20(I) and (J) allow the governmental aggregator to speak on behalf of its customers, and elect not to take back up service from the utility. This means that the customers will be placed on market-based rates if and when they return to the utility service.

With respect to utilities, the State's encouragement of government aggregation undermines the objective of providing and maintaining certainty for utilities (and customers) during the ESP period, and may result in minimizing the period in which utilities commit to ESPs. Additionally, Ohio is the only state maintaining a hybrid approach to its electric utility oversight structure. The addition of elements such as ongoing earnings tests, the blending of market rates and standard service offer rates over unspecified periods, and the imposition of the

requirement to obtain PUCO permission to transfer generation assets, while at the same time encouraging customer switching through aggregation, creates a risk environment for Ohio utilities unique to the industry, especially those that have not transferred generation assets to unregulated subsidiaries, and like DP&L, derives a majority of its revenues from Ohio.

The PUCO rules related to government aggregation should require that the government aggregator obtain customer authorization either through a ballot process or otherwise, before the aggregator can place the future market price risk on customers without their understanding the full implications of this decision.

1. **Specific Information**

DP&L proposes the following modification to the "Specific Information" portion of Appendix B, relating to Energy Security Plan requirements. Subpart (A) does not adequately recognize that Section 4928.143(B)(2) of the Revised Code authorizing a utility to include provisions for automatic recovery for certain costs includes the phrase "may include, without limitation . . " Accordingly, the opening sentence of Appendix B, Specific Information, Subpart (A) of the proposed regulations should be modified to read: "Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and, without limitation, certain other specified costs."

The additional language better conforms to the statutory provision and recognizes that under this new regulatory construct that is being developed, there may be other costs that should be tracked and trued-up through a quarterly mechanism. By way of illustration but not to provide and exhaustive list for explicit inclusion in the regulations, DP&L would note that there may be relationships among the quantities and quality of coal consumed and the amount of

limestone or other products used to permit coal of that quantity and quality to be consumed while conforming to environmental requirements. While the PUCO retains the right to approve or disapprove the specific proposals made by a utility, the regulations should better reflect the statutory provision that provides a utility with the opportunity to propose and advocate for a tracking and true-up mechanism of costs that vary directly with fuel consumption.

2. **Additional Required Information**

For the reasons explained in Section II(B) above, the rules related to the earnings test extend beyond the authority provided to the Commission by S.B. 221. Specific to the "additional *required information*" section, the proposed rules require utilities to file balance sheet, income statements and capital budgets for each of the three functions transmission, distribution, and generation, regardless of whether or not their ESP filing contains any adjustments to any rate component, or just one functional area. For example, if a utility seeks recovery of an adjustment for transmission costs, the earnings test provisions should only apply to the transmission function. An adjustment to transmission rates should not trigger an earnings review on all three functions. In addition, the text of this section should be clarified, consistent with S.B. 221, to indicate that an earnings test is not required in connection with the initial ESP filing, but only required in accordance with statutorily prescribed times. The Commission's rules should be modified as follows:

Additional Required Information to be filed after the initial ESP application

(A) Divisions (E) and (F) of section 4928.143 of the Revised Code provide for tests of the ESP with respect to excessive earnings. Division (E) of section 4928.143 of the Revised Code is applicable only if an ESP has a term exceeding three years, and would require an earnings determination to be made in the fourth year. Division (F) of section 4928.143 of the Revised Code applies to any adjustments made to the ESP and examines earnings after the end of each annual period of the ESP in which the adjustments were made ~~each year~~ to determine whether those adjustments resulted in excessive earnings. In each case, the burden of proof for

demonstrating that the adjustments made during the ESP do not result in excessive earnings ~~are not excessive~~ is borne by the electric utility. To the extent a rate adjustment was made as part of the ESP, ~~For this demonstration, at a minimum,~~ the electric utility shall provide, at a minimum, the following information for the functionalized business unit ~~total electric utility as well as functionalized as to~~ (distribution, or transmission, ~~and~~ or generation as appropriate) ~~activities~~:

(1) Balance sheet information.

(2) Income statement information.

(3) Capital budget requirements for future committed investments in Ohio.

III. 4901:1-37 CORPORATE SEPARATION

A. 4901:1-37-03 Applicability

It is unnecessary to include subsection (C) which states that this chapter applies to the sale or transfer of generating assets when Section 4901:1-37-09 addresses the sale or transfer of generating assets in detail. DP&L recommends deleting subsection (C).

B. 4901:1-37-04 General Provisions

1. General inconsistency

This section appears to restate the existing corporate separation rules. However, several aspects of these rules run contrary to the economic development and special rate arrangement provisions set forth in S.B. 221. For example, 4901:1-37-04(D)(10)(a) states that the utility should be prohibited from discriminating in the offering of its products and services; however a special arrangement or contract would do just that. The utility cannot comply with this section of corporate separation rules and provide special contracts to customers for economic development purposes.

Likewise 4901:1-37-04(D)(5) states that the utility shall not tie (nor allow its affiliate to tie) regulated service to unregulated services, however in order to offer a meaningful special

arrangement for economic development purposes, the utility will in essence have to "rebundle" its Transmission, Distribution, and Generation services thereby tying the provision of all three services together. Further as written this provision would appear to state that the utility's affiliate cannot tie its product or service to the customer taking certain services from the utility. This provision is outdated and places the utility affiliate at an unfair disadvantage against other CRES providers. For example, a CRES provider may offer certain energy monitoring devices or controls, but those devices may only be beneficial or helpful if the customer is on a real-time pricing ("RTP") or time of use ("TOU") rate. Therefore, the affiliate CRES provider may want to only sell these devices to customers that are taking TOU or RTP from the utility. There should be no reason why a non-affiliate CRES Provider could offer that service and the affiliate CRES provider cannot.

Also 4901:1-37-04(D)(6) again states that anticompetitive subsidies cannot flow from noncompetitive to competitive service and vice versa. But if discounts will be provided to customers for economic development purposes, what aspect of the service is being discounted—only the non-competitive distribution service? In general, distribution rates for large manufacturers are very small and will not provide sufficient incentives for customers to choose to locate in Ohio versus other potential locations. Thus 4901:1-37-04(D)(6) should be modified to allow for economic development discounts provided by the electric utility consistent with the state policies set forth in S.B. 221. To address this issue, DP&L proposes adding the following language to 4901:1-37-02 Purpose and scope:

> (G) Nothing in this chapter is to be construed as prohibiting or otherwise impeding an electric utility's ability to conduct activities which would permit the electric utility to satisfy the requirements of sections 4901:1-38-03 through 4901:1-38-05 of the Ohio Administrative Code.

2. **Section 4901:1-37-04(A)**

Sections 4901:1-37-04(A)(2) and (4) are duplicative. DP&L recommends deleting subsection (A)(4) and renumbering the remainder of the section accordingly. The use of the word "work" in subsection (A)(3) is unnecessary and creates confusion. The word "function" adequately captures the functional separation sought by this chapter and in light of this, the word "work" should be deleted from this section.

3. **Section 4901:1-37-04(D)**

Subsection (D)(7)[1] creates an overly-broad obligation on the part of electric utilities to exercise control over unrelated third parties and should not be a part of a Code of Conduct. In addition, "market power" is a FERC jurisdictional matter and not appropriate within a state-required Code of Conduct. This subsection should be deleted.

4. **Section 4901:1-37-04(D)(10)(e)**

Subsection (10)(e) should be modified to account for discounts DP&L applies to distressed customers (i.e. PIPP and winter reconnect customers). DP&L proposes the following addition:

> Except to the extent allowed by state law or regulation, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any retail electric service.

5. **Section 4901:1-37-04(D)(11)**

This subsection is too broadly-worded in that it can be construed to include every public comment ever made by any electric utility or affiliate employee. DP&L proposes adding the more descriptive language as follows:

> Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made when such public representations concern the entity's provision of electric services.

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[1] DP&L notes that Section 4901:1-37-04(D) erroneously contains two paragraphs numbered as "(7)." DP&L's comment applies to the second paragraph numbered (7). In addition to the substantive proposal above, the paragraphs should be renumbered to eliminate this numbering error.

C. Section 4901:1-37-05 Application

DP&L proposes deleting subsection (B)(10). Given the Commission's authority to investigate an electric utility's compliance with the corporate separation plan, such certification is unnecessary. Furthermore, the requirement is ambiguous in that is it unclear as to when and how often such certification must be made.

D. Section 4901:1-37-06 Revisions and amendments

Subsection (A) requires the Company file all proposed revisions and amendments to the corporate separation plan. DP&L suggests adding the word "material" after the word "proposed" in the first line of this subsection to limit filing superfluous documents. Finally, DP&L agrees with the spirit of subsection (B), but proposes adding the words "... and the case docket shall be closed" at the end of this subsection.

E. Section 4901:1-37-08 Cost allocation manual (CAM)

Subsection (D)(3) as written requires the inclusion of all documentation "including written agreements, accounting bulletins..." in the CAM itself. Again, to avoid inclusion of superfluous documents, DP&L proposes this subsection be revised to read:

> ~~All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates~~ Documentation that demonstrates how costs are allocated between affiliates.

In addition, subsection (H) as written is overly-broad in that only material changes to the CAM should be included in the summary of changes. DP&L therefore proposes inserting the word "material" before the word "changes" in the last line of this subsection.

IV. 4901:1-38 SPECIAL ARRANGEMENTS

A. General Comment

As an overall comment, energy efficiency programs and special rates or arrangements are two different things. Combining the two in one set of rules results in confusion and implies that one rate rider will recover all lost revenues from energy efficiency as well as delta revenues from special contract arrangements. The portion of the proposed rules published to date inappropriately mix economic development with the provisions of Ohio Revised Code Section 4928.66 (A)(2)(c), which allows a mercantile customer to offer its energy efficiency effects to the utility to be counted toward the utility's energy efficiency reduction targets, and in return the mercantile customer may avoid paying all or a portion of the energy efficiency rider. The proposed rules do not clarify the process for implementing this feature of the new law. Specifically, the PUCO implementation rules should establish a base line from which a mercantile customer can measure its energy savings such that this provision is implemented consistently throughout the state. Subsection (B) of 4901:1-38-04 is awkwardly placed in that it deals with energy efficiency rather than economic development in its entirety but does not fully explain the implementation of sections of the new law as described above. The energy efficiency schedule set forth in 4901:1-38-04(B) should be removed from the "Special Arrangements" section of this portion of the rules and instead included in the proposed rules dealing more directly with energy efficiency provisions of SB 221 which we understand will be issued in mid-August.[2]

B. 4901:1-38-03 Economic Development Schedule

The term "non-retail purposes" is included in 4901:1-38-03(A)(2)(a) and 4901:1-38-03(B)(2)(a) but is not defined. The term "non-retail purposes" should be defined as "purposes

[2] While DP&L doesn't object to maintaining subsection (A) of 4901:1-38-04 in this chapter due to its relationship to the subject of Economic Development, in terms of logical placement within the rules, moving subsection (A) to the portion of the rules dealing with energy efficiency as proposed for subsection (B) would also make sense.

that have a main, although not necessarily exclusive, function of supporting wholesale or business-to-business activity." This definition should be inserted into 4901:1-38-01.

Both 4901:1-38-03(A)(2)(b) and 4901:1-38-03(B)(2)(b) include job creation requirements and use the restrictive term "full-time jobs". The clear intent of this provision is to encourage added employment. This goal can be served by the addition of either full-time or part-time positions. Consequently, 4901:1-38(A)(2)(b) should be modified to read "... at least twenty-five new, full-time or full-time-equivalent jobs must be created..." Similarly, 4901:1-38(B)(2)(b) should read "...the number of full-time or full-time-equivalent jobs to be retained must be at least twenty-five."

Clarity as to timeframe is needed in Section 4901:1-38-03(A)(2)(c), which should be modified to read "The average hourly base wage rate of the new, full-time or full-time-equivalent jobs must be at least one hundred fifty per cent of federal minimum wage in effect at the time of the customer's application."

Finally, section 4901:1-38-03(A)(2)(d) refers to investment but fails to require this to be new investment, nor does it have a timeframe associated with the investment. This section should be modified to read "The project must have a new or additional fixed asset investment in land, building, machinery/equipment, and infrastructure at a single location of at least five hundred thousand dollars to be invested within three years of initial operations."

C. 4901:1-38-04 Energy Efficiency Schedule

1. Proposed modifications to 4901:1-38-04(A)

Should this provision remain in this chapter of the proposed rules, 4901:1-38-04(A), explains the applicability of the proposed schedule. Based on language contained throughout the section, it appears that the intent is to offer such an incentive to **new or expanding** energy

efficiency production facilities; however, the opening paragraph fails to expressly set forth that intent. Therefore, this paragraph should be altered to read "...energy efficiency schedule applicable to new or expanding energy efficiency production facilities..."

For the same reasons set forth in connection with comments on 4901:1-38-03(A)(2)(b) and 4901:1-38-03(B)(2)(b) above, the employment parameter in 4901:1-38-04(A)(2)(b) should read "full-time jobs or full-time-equivalent jobs." Likewise, subsection (A)(2)(c) should read: "The average hourly base wage rate of the new, full-time or full-time-equivalent jobs must be at least one hundred fifty per cent of federal minimum wage in effect at the time of the customer's application." Finally, consistent with the proposed modifications to the economic development schedule, subsection (A)(2)(c) should be modified in that the phrase "fixed asset investment" should be replaced with "new or additional fixed asset investment". In addition, the phrase "to be invested within three years of initial operations" should be added to the end of the sentence.

2. Proposed modifications to 4901:1-38-04(B)

Regardless of the location of subsection (B) within the rules, DP&L respectfully suggests that certain provisions of should be modified as described below. Section 4901:1-38-04 (B)(2) should put in place a structure for identifying how the customer-provided impacts will be measured and valued -- and this should be consistent with the measurement and valuation process applicable to the EDU. Also, to the extent the EDU relies on customer-provided impacts to meet its target, if such customer-provided impacts are less than the anticipated level, this should not trigger a penalty to the utility for not meeting the target. Finally, the amount of any financial benefit given to a customer pursuant to 4901:1-38-04 (B) cannot exceed the product of the energy efficiency surcharge and the customer's baseline usage.

D. 4901:1-38-05 Unique Arrangements

As drafted, subsection (B) could be extremely burdensome to the Commission. Without some articulated parameters which define what entities would qualify for such a special arrangement or what criteria the Commission will use in determining whether or not to mandate one, any customer can apply for a discounted rate. At a minimum, the Commission should consider adoption of a standardized application form, as is required of the EDU's under the related provisions, and articulate some minimum standards for consideration. Finally, as is in other sections, a paragraph should be added regarding the confidentiality of customer information. Specifically, 4901:1-38-05(D) should be added and should read:

> Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall remain confidential by the electric utility. Nonetheless, the name and address of customers eligible for the schedules shall be public information.

E. 4901:1-38-06 Reporting requirements

Subsection (B) of this provision requires that any customer served under any schedule or unique arrangement set forth in this Chapter indirectly report to the Commission by way of the EDU as a conduit. The PUCO does not have jurisdiction over customers, it has jurisdiction over utilities. This rule seems to make a jurisdictional leap, and puts the utility in the awkward position of policing whether the customer provides correct information or meets the deadline. If it is Staff's intention to require a customer to report annually on whether they are still meeting the criteria, the customer should be reporting directly to the PUCO and the PUCO should rule on whether or not the customer meets the criteria, and notify the utility if the customer is no longer eligible. This arrangement, however, contains inherent jurisdictional deficiencies, and DP&L would propose striking this subsection in its entirety.

F. 4901:1-38-07 Level of incentives

This rule should contain language ensuring that the *structure* of the incentive is such that it must be able to be accommodated through a utility's standard billing system so as to minimize costs which would be associated with customized billing. DP&L suggests section (A) be modified to read as follows:

> The level of the incentives associated with any schedule or unique arrangement established pursuant to this chapter shall be determined as part of the commission's review and approval of the applications filed pursuant to this chapter. Incentives shall be structured so as to be readily accommodated through the utility's standard billing system.

G. 4901:1-38-08 Revenue recovery

Should the commission adopt DP&L's proposal of removing the energy efficiency provisions contained in section 4901:1-38-04(B) from this chapter as suggested above, section 4901:1-38-08 is appropriate as written. Should incentives for customers employing energy efficiency measures be included in this chapter, then this section on revenue recovery needs to handle revenue recovery for energy efficiency measures differently. A rider for the recovery of costs, including delta revenue, of economic development initiatives is appropriate. A rider for the recovery of costs associated with energy efficiency measures is appropriate. However, to combine the two concepts, which are very different in nature, is not appropriate. Any costs, including lost revenue, associated with the employment of energy efficiency measures should be reflected in a separate energy efficiency rider.

H. 4901:1-38-09 Failure to comply

Section 4901:1-38-09(C), should be slightly modified to reflect that the utility may not be successful in recovering amounts required from a defaulting customer, and modified to read: "If the customer is required to pay for all or part of the incentives previously provided, ~~such~~ only recovered amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of this chapter."

V. RESPONSES TO QUESTIONS

Paragraph 7 of the Commission's July 2, 2008 Entry also asked that commenting parties provide answers to a series of questions. DP&L's responses to those questions are set forth below.

(a) Should the rules on the competitive bidding process (Proposed O.A.C. §4901:1-35-03, Appendix A, Part (B)) provide for consideration of alternative products and approaches to conducting competitive bidding?

Yes – Market structures may change and thus the rules for competitive bid should be somewhat flexible and non-prescriptive.

(b) Should the Commission require consideration of the value of lost load in ensuring that customers' and the electric utility's expectations are aligned as required by Section 4928.143(B)(2)(h), Revised Code?

Yes, the value of lost load should be considered in evaluating the cost of meeting the energy efficiency targets spelled out by the law. Recovery of lost revenues is specifically included in the list of items that may be included in a utility's infrastructure modernization plan (see line 1054 – 4928.143 (B)(2)(h)). Rules issued by the Commission to implement S.B. 221 should be consistent with the law.

(c) Should the Commission by rule invite an electric utility to identify in an ESP specific long-term objectives (e.g., objectives related to the implementation of state policies or meeting standards contained in S.B. 221), together with milestones and metrics for measuring progress? If so, are there specific topics which should be addressed?

No. The Commission rules should maintain flexibility to change as market conditions and federal and state policies change.

(d) With respect to an energy efficiency schedule based on a reduction in electricity consumption (Proposed O.A.C. §4901:1-38-04 (B)), how should the rules define the baseline level of customer energy consumption from which a reduction would be measured?

In order to determine any result of implementing an energy efficiency product or service, engineering estimates should suffice. It would be uneconomical to send someone out to every customer's facility to measure energy efficiency before the energy efficiency measure is implemented, and then again after the energy efficiency measure is in place. Energy efficiency rules should be flexible with respect to the programs the utility may choose to employ may or may not be the in form of tariffs. For example, in order to meet the energy reduction target a *utility may implement a direct load control program, whereby residential customers' thermostats* are directly lowered one or two degrees during the hottest summer days. This program would not likely require a tariff, the customer could remain on its current residential rate, but receive benefits of lower energy costs and perhaps other economic benefits for agreeing to participate in the program. The PUCO rules should not prescribe the energy efficiency programs the utilities may implement since it is up to the utility to meet the targets set forth in the law or be subject to penalties. The utility should be required to provide sufficient data to the PUCO to demonstrate that its proposed programs are cost effective and reasonably expect that they will result in energy reductions that will meet the S.B. 221 energy efficiency targets. In conclusion, section 4901:1-38 should only address economic development programs and the process by which a mercantile customer can seek PUCO intervention if it finds that it is not able to reach an agreement with the *utility for a special arrangement for economic development purposes. Further*, the Commission's rules should establish the criteria for which customers can receive special arrangements such that not all business and governmental customers can receive rate relief to the detriment of all non-business and governmental customers.

With respect to calculation of a mercantile customers baseline as it relates to ORC 4928.66 (A)(2)(c), it should be based on a three year average, since this is the standard that

applies to utilities to calculate their compliance with the energy efficiency targets pursuant to ORC 4928.66(A)(2)(a). Pursuant to ORC 4928.66 (A)(2)(c) a mercantile customer can avoid all or a portion of the energy efficiency surcharge if it provides its energy efficiency results to the utility to be used towards meeting the utility's energy efficiency targets. In order to qualify for this lower rate, the customer should be required to meet the same energy efficiency target prescribed by the law for that year. Mercantile customers that save only 1 kWh by changing out one light bulb should not qualify to avoid the utility's energy efficiency surcharge, they should be held to the statewide standard for energy efficiency.

(e) Should special arrangements provided for in Chapter 4901:1-38 be applicable only to customers of an electric utility providing service pursuant to an electric security plan?

No. Special arrangements for economic development contracts are necessary to carry out state policy of promoting job growth and retention regardless of whether the utility chooses to file MRO or ESP.

(f) Should there be a cap on the level of incentives for special arrangements authorized pursuant to Chapter 4901:1-38?

Yes. There should be some state guidance as to what industries need additional support and what financial conditions a customer must demonstrate before they can become eligible for a special arrangement. Moreover, recovery of special arrangement delta revenues pursuant to 4928.143 (B)(2)(i) must be non-bypassable by all customers.

VI. CONCLUSION

DP&L appreciates the opportunity to provide comments and feedback with respect to the proposed rules, particularly in light of the dramatic impact these rules will have on the structure of electric service in Ohio into the future. DP&L looks forward to working with all interested parties in connection with developing these rules. For the reasons more fully explained above,

DP&L respectfully requests that the Commission amend or modify the rules as set forth in DP&L's proposals.

Respectfully submitted,

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